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State Ex Rel., J.P.F.

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STATE *EX REL.* J.P.F.
(decided April 2, 2004)

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Imagine an inexperienced young boy who, on the verge of discovering his sexuality, inappropriately touches a girl. What is the worst thing that can happen? He can become branded a criminal for life. In New Jersey, an offense of fourth degree sexual contact carries with it lifetime compulsory registration as a sex offender if the victim is a minor.¹ Under New Jersey's "Megan's Law" statute,² the teenager's inappropriate fumbblings can mark him as a sexual predator and subject him to stigma, prejudice, and denied opportunities for the rest of his life.³

Megan's Law was enacted to prevent heinous tragedies such as what happened to Megan Kanka.⁴ The statute requires registration of both adults and juveniles adjudicated delinquent for sexual contact, a fourth degree offense.⁵ Registration for minor offenses is obligatory not based on the immoral nature of the conduct, but

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1. N.J. STAT. ANN. §2C:7- 2b (2) (West 2005).

2. New Jersey Governor Christine Whitman signed "Megan's Law" on October 31, 1994. See N.J. STAT. ANN. §2C-7-1 through §2C: 7- 17 (West 2005).

3. See Timothy E. Wind, *The Quandary of Megan's Law: When The Child Sex Offender Is a Child*, 37 J. MARSHALL L. REV. 73, 118 (2003) (discussing the goals and consequences of Megan's Law and its application to juvenile offenders).

4. In 1994, responding to a desperate mother's cry for help to find her missing child, the police recovered Megan Kanka's body dumped in some weeds at a local park in Hamilton, N.J. Jesse Timmendequas, a twice convicted sex offender, who lived across the street from the Kankas, confessed to killing Megan. Timmendequas lured Megan into his home with the promise of seeing a puppy, proceeded to repeatedly rape and sodomize her, and then finally strangle her by placing two plastic bags over her head. Megan's mother contends that had she known of Timmendequas' history, the tragedy could have been prevented. See *State v. Timmendequas*, 737 A.2d 55, 66 (N.J. 1999); see also *Man Charged in 7 - Year - Old Neighbor's Killing*, N.Y. TIMES, Aug. 1, 1994, at B5; Charles Stile, *In Memory of Megan*, TRENTON TIMES, Oct. 4, 1994, at A1.

5. N.J. STAT. ANN. §2C:14-3b (West 2005). Megan's Law imposes compulsory community notification requirements for convicted sex offenders, both adults and juveniles. See generally Daniel M. Filler, *Making the Case for Megan's Law: A Study in Legislative Rhetoric*, 76 IND. L.J. 315 (2001) (discussing Megan's Law).

based solely on the age of the victim.⁶ The stigma attached to minors forced to register under Megan's Law psychologically harms them and impairs their chances of ever securing employment, making friends, and having a normal life.⁷ This lifetime registration requirement is unwarranted based on a minor offense that, while inappropriate, was perhaps a mere youthful indiscretion.

In *State ex rel. J.P.F.*,⁸ the New Jersey Superior Court, Appellate Division, upheld the application of Megan's Law registration requirements to a juvenile adjudicated delinquent of fourth degree sexual contact.⁹ The court ordered the juvenile to register as a sex offender and rejected the defendant's contention that Megan's Law should not apply to him.¹⁰ The court's literal reading of the statute was correct, but the application of Megan's Law to juveniles charged with fourth degree crimes is overly broad and runs contrary to the purpose of the Juvenile Code.¹¹ This case comment argues that the legislature should amend the particular portion of the statute that makes registration compulsory based solely on the age of the victim or, in the alternative, the courts should allow for early termination of registration requirements upon a showing that the juvenile is a candidate for rehabilitation.

In the case at bar, J.P.F. became acquainted with V.K.¹² and wished to establish an intimate relationship with her.¹³ Several weeks later, J.P.F. and V.K. gathered together with several friends for a night out.¹⁴ When V.K.'s boyfriend failed to show up with her car keys, J.P.F. offered to drive her to her car.¹⁵ As he drove to her car, J.P.F. began rubbing V.K.'s legs, ignoring her disapproval of his

6. See N.J. STAT. ANN. § 2C:7 – 2b (2) (West 2005) ("For the purposes of this act a sex offense shall include the following: A conviction, adjudication of delinquency, or acquittal by reason of insanity . . . criminal sexual contact pursuant to N.J.S. 2C:14-3b. *if the victim is a minor.*") (emphasis added).

7. Wind, *supra* note 3, at 118.

8. *State ex rel. J.P.F.*, 845 A.2d 173 (N.J. Super. Ct. App. Div. 2004).

9. *Id.*

10. *Id.* at 182-83.

11. N.J. STAT. ANN. §2A: 4A-21 (West 2005).

12. J.P.F. was born on May 3, 1985 and V.K. was born on February 14, 1985. Thus, on the date in question, J.P.F. and V.K. were three and a half months and one month shy of their eighteenth birthdays, respectively.

13. *J.P.F.*, 845 A.2d at 175.

14. *Id.*

15. *Id.*

behavior.¹⁶ When he parked the car, J.P.F. revealed that he had V.K.'s keys, and placed the keys in his crotch area for V.K. to recover.¹⁷ She, however, refused and exited the car.¹⁸ As V.K. approached her car, J.P.F. blocked her entrance, exposed his penis to her and requested that she perform oral sex on him.¹⁹ He then proceeded to move behind her, stroke her chest and buttocks over her clothing, and put his hand inside her jeans.²⁰ V.K. alleged that J.P.F. digitally penetrated her, although conflicting testimony raised doubt over the allegations.²¹ V.K. reported the incident to the police the next day.²²

The state charged J.P.F. with lewdness, harassment, and sexual assault.²³ At trial, J.P.F. produced several witnesses who attested to V.K.'s flirtatious behavior, disagreement with her boyfriend on the night of the incident, and an apparent acceptance of J.P.F.'s advances.²⁴ J.P.F. admitted to touching V.K., but argued that she welcomed his advances, relying upon the defense of consent.²⁵

The Somerset County Family Court found that the state failed to prove the elements of sexual assault beyond a reasonable doubt and adjudicated J.P.F. delinquent on the charge of criminal sexual contact by force or coercion, a lesser included offense.²⁶ J.P.F. was placed on probation for a period of one year, directed to seek counseling, and ordered not to have any further contact with the victim.²⁷ In addition, the court ordered twenty-two days of detention.²⁸ The court did not, however, order defendant to register as a

16. *Id.* at 175–76.

17. *Id.*

18. *Id.*

19. *Id.*

20. *J.P.F.*, 845 A.2d at 176.

21. *Id.*

22. *Id.*

23. N.J. STAT. ANN. § 2C:14-4a. (West 2005); N.J. STAT. ANN. § 2C:33-4c. (West 2005); N.J. STAT. ANN. § 2C:14-2c(1) (West 2005).

24. *J.P.F.*, 845 A.2d at 176.

25. *Id.*

26. N.J. STAT. ANN. § 2C:14 – 3b (West 2005) (“An actor is guilty of criminal sexual contact if he commits an act of sexual contact with the victim under any of the circumstances set forth in section 2C:14-2c. (1) through (4) . . . Criminal sexual contact is a crime of the fourth degree.”).

27. *J.P.F.*, 845 A.2d at 176.

28. *Id.*

sex offender as required by section 2C:7-2b(2) of Megan's Law.²⁹ The court recognized that the literal reading of the statute would impose on J.P.F. a duty to register, but declined to take the literal approach, stating that such an expansive reading of the law does not comport with the legislative intent behind the statute.³⁰ The court held that where the juvenile offender and the victim were approximately the same age and near the age of majority, the provision of Megan's Law that compels registration based on the age of the victim is not consistent with the rehabilitative purpose of the Juvenile Code.³¹ Furthermore, the court noted the lack of "delineation" in victims' ages; namely, that the law treated a victim who is seventeen years and 364 days old the same as if she were only one day old.³² Finding such a reading of the statute unintended by the legislature, the court declined to apply it to the defendant.³³

The State of New Jersey appealed the lower court's decision. J.P.F. filed a cross appeal, claiming the conviction was against the weight of the evidence.³⁴ The appellate division affirmed J.P.F.'s conviction, but reversed as to the State's appeal and held that J.P.F. was subject to the registration provision of Megan's Law.³⁵

On appeal, J.P.F. presented three arguments in opposition to the registration requirements: (1) the obligation of a juvenile who was adjudicated delinquent to register should terminate at age eighteen; (2) the "low level nature" of a fourth degree crime, coupled with the fact that both he and the victim were practically the same age, does not warrant registration under Megan's Law; and (3) because Megan's Law requires registration for criminal sexual contact only if the victim is a minor, the statute warrants the construction that the perpetrator must be an adult or a "significantly older juvenile."³⁶

29. *Id.*

30. *Id.* at 176-77.

31. *Id.*

32. *J.P.F.*, 845 A.2d at 177.

33. *Id.*

34. *Id.*

35. *Id.* at 178.

36. *Id.* at 182-83.

J.P.F.'s first argument rested on the provision of the Juvenile Code that requires the state to seal juvenile records³⁷ and terminate orders of dispositions at age eighteen.³⁸ The court dismissed this argument by noting that Megan's Law registration provisions are not deemed to constitute "order[s] of disposition."³⁹ Furthermore, allowing termination of sex offender registration for a juvenile adjudicated delinquent past age fourteen would be at odds with the New Jersey Supreme Court's decision in *In re Registrant J.G.*⁴⁰ In *J.G.*, a ten-year-old boy pled guilty to a crime that would constitute second degree sexual assault if he were an adult.⁴¹ The N.J. Supreme Court in *J.G.* held that for juveniles who were adjudicated delinquent for a crime they committed when under the age of fourteen, their registration requirements will terminate at age eighteen if the juvenile can convince the court that he no longer poses a threat to the community.⁴² The court based its decision on the presumptive criminal incapacity of a child under fourteen years.⁴³ Relying on the holding of *J.G.*, the appellate division rejected J.P.F.'s argument that his registration should end on his eighteenth birthday.⁴⁴

The court addressed the remainder of J.P.F.'s arguments by interpreting the legislative intent behind Megan's Law and its relationship to the disclosure provisions of the Juvenile Code. The court acknowledged the discrepancy between the registration requirement of Megan's Law and the non-disclosure provision of the Juvenile Code,⁴⁵ but noted that the purpose of the Juvenile Code's

37. See N.J. STAT. ANN. § 2A:4A-60 (West 2005) ("Social, medical, psychological, legal and other records of the court and probation division, and records of law enforcement agencies, pertaining to juveniles charged as a delinquent or found to be part of a juvenile family crisis, shall be strictly safeguarded from public inspection.").

38. See N.J. STAT. ANN. § 2A:4A-47 (West 2005) ("Any order of disposition entered in a case under this act shall terminate when the juvenile who is the subject of the order attains the age of 18, or three years from the date of the order whichever is later. . .").

39. *J.P.F.* at 180 (quoting *In re B.G.*, 674 A.2d 178 (N.J. Super. Ct. App. Div. 1996)).

40. *Id.* at 182 (citing *In re Registrant J.G.*, 777 A.2d 891 (N.J. 2001)).

41. *J.G.*, 777 A.2d at 894.

42. *Id.* at 912.

43. *Id.*

44. *J.P.F.*, 845 A.2d at 185.

45. N.J. STAT. ANN. § 2A:4A-60 (West 2005). The Code provides that "legal and other records of the court and probation division . . . pertaining to juveniles charged as

non-disclosure provision is to promote rehabilitation of the juvenile, whereas the objective of Megan's Law is to protect the community from repeat sex offenders.⁴⁶ The court reasoned that since the Juvenile Code was in existence when Megan's Law was adopted, "the more specific law — [Megan's law] — must be interpreted as prevailing over the more general one [the Juvenile Code]."⁴⁷

The court next turned to J.P.F.'s contention that in order for the statute to apply, the perpetrator must be significantly older than the victim. The court found this argument "illogical," stating that "where the sexual activity is engaged in by force, it is the force that constitutes the culpable and predatory nature of the conduct. It matters little whether the victim is about the same age, older, or younger than the perpetrator."⁴⁸ In addition, the court held that because the legislature made criminal sexual contact an offense only if the victim is a minor, this evinced a legislative intent to protect child victims even for low level sex offenses.⁴⁹ Further, the court pointed to the fact that disclosure of the juveniles' information is limited. Juveniles are generally excluded from the Internet registries if they are adjudicated delinquent but do not pose a high risk of re-offense.⁵⁰

The appellate division concluded that since J.P.F. was in the fourteen-to-eighteen year-old age range, he was presumptively capable of committing a criminal act. Thus, the court held that subjecting him to Megan's Law registration requirements was not "absurd."⁵¹ While the court acknowledged the legislature's authority to amend the statute, it noted that it was not the job of the courts to draw lines, and these substantive judgments should be left to the legislature to make.⁵²

The holding of the appellate division was correct under the existing statute in New Jersey; however, the statute is overly broad with respect to juveniles who commit minor offenses. The New

a delinquent . . . shall be strictly safeguarded from public inspection," allowing some enumerated exceptions.

46. *J.P.F.*, 845 A.2d at 180.

47. *Id.* at 182 (quoting *In re B.G.*, 674 A.2d 178).

48. *Id.* at 183.

49. *Id.*

50. *Id.* at 184.

51. *Id.* at 186.

52. *Id.*

Jersey legislature should modify Megan's Law to better correspond with the rehabilitative purposes of the Juvenile Code. The legislature may amend the statute in the following three ways: (1) impose a restriction similar to the Federal Jacob Wetterling Act; (2) compel registration, but terminate it when the juvenile attains the age of eighteen, or three years after the date of the order if the juvenile proves by clear and convincing evidence that he is no longer a threat to the community; or (3) abolish the registration requirement for fourth degree offenses altogether.

In 1994, Congress enacted the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program⁵³ that established guidelines for state programs to require sex offender registration.⁵⁴ The Act set a "minimum baseline" of statutory requirements that states must follow to receive federal funding.⁵⁵ The statute addresses an important distinction between acts that trigger registration by adults and acts that trigger registration by juveniles. Section 3(A) of the Jacob Wetterling Act provides, in pertinent part, that "conduct which is criminal only because of the age of the victim *shall not* be considered a criminal offense if the perpetrator is 18 years of age or younger."⁵⁶ Thus, where a victim's age is the basis for an offense, Congress apparently intended to provide harsher penalties for sexual misconduct against minors by perpetrators who are adults, not juveniles. While the Act only operates to set the floor for states, Congress seemingly decided that a higher floor was too strict. Several state legislatures, evincing a similar intent, have adopted laws that exclude juvenile sex offenders under the age of eighteen from registering if their offenses were only criminal based on the age of their victim.⁵⁷

53. 43 U.S.C.S. §14071 (a)(1)(A) (1994).

54. See generally Jacob Wetterling Foundation, *History of the Jacob Wetterling Act*, at http://www.jwf.org/jwf_jwact_history.html (last visited Nov. 22, 2004) (providing an overview of the Jacob Wetterling Act and discussing its effect on state funding).

55. Wayne A. Logan, *A Study in "Actuarial Justice": Sex Offender Classification Practice and Procedure*, 3 BUFF. CRIM. L. REV. 593, 599 (2000) (describing the Jacob Wetterling Act as the "floor" for state programs to follow).

56. 43 U.S.C.S. §14071 (3)(A) (emphasis added).

57. See, e.g., GA. CODE ANN. § 42-1-12(a)(4)(C) (2004) ("conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger"); KY. REV. STAT. ANN. § 17.500(2)(b) (Mich. 2004) (excluding criminal offenses against minors if the offender was under eighteen at

The New Jersey legislature should follow the direction of Congress and other states and amend its current statute with a provision similar to section 3(A) of the Jacob Wetterling Act. Under the present statutory requirements, a juvenile adjudicated delinquent solely because his victim is a minor is subject to a lifetime of compulsory registration.⁵⁸ Lifetime registration requirement runs afoul to the long standing notion that juveniles are apt to respond to treatment and, thus, can be rehabilitated.⁵⁹ Extending registration requirements to juveniles for acts that are designated as criminal solely based on the victim's age does not advance the goal of rehabilitation. Nevertheless, applying this requirement to adults or to juveniles who are significantly older than their victim comports with the traditional approach that adults are held more accountable for their actions than are juveniles.

New Jersey sexual assault statutes delineate criminal culpability in degrees based on the age of the victim. The crime of aggravated sexual assault, a *first* degree crime, occurs if the victim is under the age of thirteen.⁶⁰ An actor is guilty of sexual assault, a *second* degree crime, if the victim is thirteen-to-sixteen years old and the actor is at least four years older.⁶¹ In each instance of sexual assault, the statute focuses on the age discrepancy between the victim and the of-

the time the offense occurred); VT. STAT. ANN. TIT. 13, § 5401 (10)(b) (2004) (making an exception to the definition of a "sex offender" when "conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18"); HAW. REV. STAT. ANN. § 846E-1 (Michie 2004) (maintaining that conduct deemed criminal against a minor "excludes conduct that is criminal only because of the age of the victim . . . if the perpetrator is eighteen years of age or younger").

58. N.J. STAT. ANN. § 2C:7-2(f) (West 2005) ("[A] person required to register under this act may make application to the Superior Court of this State to terminate the obligation upon proof that the person has not committed an offense within 15 years following conviction or release from a correctional facility for any term of imprisonment imposed, whichever is later, and is not likely to pose a threat to the safety of others.").

59. See Brian R. Suffredini, Note, *Juvenile Gunslingers: A Place for Punitive Philosophy in Rehabilitative Juvenile Justice*, 35 B.C. L. REV. 885 (1994).

60. N.J. STAT. ANN. § 2C:14-2a (1) (West 2005) ("An actor is guilty of aggravated sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances: The victim is less than 13 years old.").

61. N.J. STAT. ANN. § 2C:14-2c (4) (West 2005) ("An actor is guilty of sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances: The victim is at least 13 but less than 16 years old and the actor is at least four years older than the victim.").

fender. This supports the notion that sex crimes committed by adults against children under age sixteen should be penalized more severely than the same actions by juveniles. The portion of Megan's Law that mandates registration for an offense based solely on the victim's age should be modified to reflect this legislative policy. The registration statute could be amended to read "a conviction, adjudication of delinquency, or acquittal by reason of insanity for . . . criminal sexual contact pursuant to N.J.S. 2C:14-3b if the victim is a minor and *the offender is*: (1) *an adult*, or (2) at least four years older than the victim." Such reformation of New Jersey's Megan's Law statute will help protect juveniles who are guilty of minor offenses from an unwarranted lifetime stigma as a sex-offender.⁶²

A second proposed amendment to the current statute would require registration, but allow its termination when the juvenile reaches his eighteenth birthday or, in the alternative, three years from the date of registration if the juvenile proves by clear and convincing evidence that he is no longer a threat to the community. This amendment would extend the New Jersey Supreme Court's ruling in *J.G.*⁶³ The *J.G.* court focused on the distinction between juveniles over and under the age of fourteen, finding that juveniles under fourteen presumptively lack the capacity to commit a crime.⁶⁴ The court found "implausible and anomalous the notion that a child 'sex offender' such as *J.G.* [ten years old at the time of offense] should, pursuant to Megan's Law, be subject to a lifetime registration requirement."⁶⁵

The *J.G.* court stopped short of declaring Megan's Law unconstitutional as it applies to juveniles, but attempted to reconcile its purposes with the Juvenile Code by drawing a bright line rule at age fourteen.⁶⁶ In imposing registration requirements for sex offenders, the New Jersey legislature did not distinguish between juveniles younger than fourteen years of age and those older. The current

62. See Elizabeth Garfinkle, Comment: *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community Notification Laws to Juveniles*, 91 CALIF. L. REV. 163, 195 (2003) (discussing how the application of Megan's law to juveniles is contrary to the goals of the juvenile justice system marking children as "sexual predators" and "subjecting them to stigma, prejudice, and denied opportunities").

63. *J.G.*, 777 A.2d 891.

64. *Id.* at 905.

65. *Id.* at 912.

66. *Id.*

statute subjects a juvenile adjudicated delinquent solely because his victim is a minor, a fourth degree offense, to a lifetime of compulsory registration.⁶⁷ This requirement is not supported by the Juvenile Code and contradicts the notion that juveniles respond to treatment and can be rehabilitated.⁶⁸ The purpose behind the adoption of the Juvenile Code is to “prevent children from being treated as criminals.”⁶⁹ Lifetime registration requirement for juveniles eradicates the protection of a minor’s indiscretions from public scrutiny.⁷⁰ In reconciling the purpose of Megan’s Law with the Juvenile Code, the legislature can allow termination of registration once the juvenile reaches eighteen, or three years after the court order, as paralleled in the statute for dispositions,⁷¹ and place the burden on the juvenile to show by clear and convincing evidence that he no longer poses a threat to the community. This construction will effectuate the purpose of the Juvenile Act to “[maintain] an adequate program of supervision, care and rehabilitation [for the juvenile] . . . promote accountability and protect the public.”⁷² It will also aid in fulfilling the goal of Megan’s Law which is to protect the community from repeat sex offenders.⁷³ The legislative statement to the Code of Juvenile Justice⁷⁴ provides for “harsher penalties for juveniles who commit *serious acts* or who are repetitive offenders, while broadening family responsibility and the use of alternative dispositions for juveniles committing *less serious offenses*.”⁷⁵ The purpose of the legislation was to handle the serious

67. See N.J. STAT. ANN. § 2C:7 – 2(f) (West 2005).

68. See generally Suffredini, *supra* note 59 (discussing the rehabilitative nature of the juvenile system).

69. Franklin E. Zimring, *The Common Threat: Diversion in the Jurisprudence of a Century of Juvenile Justice*, 88 CALIF. L. REV. 2479 (2000).

70. See Garfinkle, *supra* note 62.

71. See N.J. STAT. ANN. §2A:4A-47(a) (West 2005). Although Megan’s Law registration requirements were held not to constitute an order of disposition, see *State ex rel. B.G.*, 674 A.2d 178, the court can use the statute by analogy to create a workable time frame before terminating registration requirements.

72. N.J. STAT. ANN. §2A:4A-21(b) (West 2005).

73. See N.J. STAT. ANN. §2C:7-1(a) (“The danger of recidivism posed by sex offenders . . . require a system of registration that will permit law enforcement officials to identify and alert the public when necessary for the public safety.”).

74. N.J. STAT. ANN. § 2A:4A-21 (West 2005).

75. *J.G.*, 777 A.2d at 903 (quoting Statement to Assembly Bill No. 641, Senate Judiciary Comm. 1 (February 8, 1982)) (emphasis added).

offenders more stringently.⁷⁶ Loosening the guidelines for fourth degree offenses would help effectuate the legislature's intent in passing Megan's Law, which was to guard against the threat of recidivism posed by convicted sex offenders who prey on children.⁷⁷

The courts should retain discretion in deciding whether to terminate a juvenile's registration and place the burden upon the juvenile to show that he does not pose a risk to the community. Several states have not only adopted this rule, but have expanded it to allow courts to use their discretion in requiring registration in the first place,⁷⁸ or to require the initial registration only where there is clear and convincing evidence that the juvenile will likely re-offend.⁷⁹ Of the twenty-four states that compel juveniles to register, many impose burdens less severe than New Jersey. For example, California imposes registration on offenders for only the most serious offenses such as rape;⁸⁰ Mississippi mandates registration only after the juvenile has been adjudicated delinquent twice for a sex offense;⁸¹ and North Carolina terminates registration on the juvenile's eighteenth birthday.⁸² Accordingly, the legislature can mandate initial registration and then allot the family court discretion whether to terminate the requirements, allowing some leniency for juveniles who the court determines to be candidates for rehabilitation.

The third proposed alternative is to exempt fourth degree offenses from registration requirements altogether. In New Jersey, aside from disorderly persons offenses, fourth degree crimes are the least serious crimes, and usually carry a presumption of non-incarceration for first time offenders.⁸³ In many cases, first time

76. *J.G.*, 777 A.2d at 903.

77. See N.J. STAT. ANN. § 2C: 7-1 (West 2004).

78. Iowa, Arkansas, and Colorado allow registration to be subject to the juvenile court's discretion. See, e.g., ARK. CODE ANN. §§ 12-12-903 (2003); COLO. REV. STAT. ANN. § 18-3-412.5(8.5) (2004); IOWA CODE ANN. §§ 692A.2(4) (2003).

79. See, e.g., IND. CODE ANN. § 5-2-12.4(b)(3) (Michie 2004).

80. CAL. PENAL CODE § 290 (West 2004).

81. MISS. CODE ANN. § 45-33-25 (2004).

82. N.C. GEN. STAT. § 14-208.26 (2004).

83. N.J. STAT. ANN. § 2C: 44-1(d) (West 2005); N.J. STAT. ANN. § 2C: 44-1(e) (West 2005). In New Jersey, only first and second degree crimes carry a presumption of incarceration. There is a presumption of non-incarceration for third and fourth degree offenses for first time offenders.

offenders can enroll into a Pretrial Intervention Program ("PTI") where the offender is put on a period of probation, after the completion of which the charges are dismissed.⁸⁴ The PTI program is "based on a rehabilitative model that recognizes that there may be an apparent causal connection between the offense charged and the rehabilitative needs of a defendant."⁸⁵ One of the recognized benefits of the PTI program is that "if successfully completed, there is no record of conviction and the defendant avoids the stigma of a criminal record."⁸⁶ Imposing Megan's Law registration requirements to a fourth degree offense that may be eligible for PTI is illogical. In its application of PTI to fourth degree offenders, New Jersey recognizes that the low level nature of the offense is insufficient to label someone a criminal and place on them the stigma of having a criminal record.⁸⁷ Yet for this same fourth degree offense, where an offender can escape a criminal record by successful completion of probation, the legislature imposes a *lifetime* registration requirement. This runs contrary to the rehabilitative purposes behind the probationary sentence for the crime. After all, how can the state punish an offense with a one year probationary period and then compel the person to register with the state for the remainder of his life? In imposing alternatives to incarceration such as PTI, it seems that the legislature did not intend an offender to be branded a criminal for life. By eliminating fourth degree crimes from the Megan's Law statute, the legislature may be able to remedy this seeming inconsistency.

The original purpose behind the enactment of Megan's Law was to prevent tragic occurrences such as what happened to Megan Kanka. Broadening the scope of the statute and imposing registration for minor offenses is not consistent with this legislative intent. Compelling registration of juveniles for fourth degree crimes runs contrary to the rehabilitative model of the Juvenile Code. The court in *J.G.* attempted to reconcile the two provisions by drawing a bright line rule. However, it is the job of the legislature, and not the courts to reconcile such disparities.

84. *Id.* See New Jersey Judiciary, *Pre Trial Intervention Program*, available at <http://www.judiciary.state.nj.us/criminal/crpti.htm> (last visited Feb. 8, 2005).

85. *Id.*

86. *Id.*

87. *Id.*